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ABSTRACT

Noting that there are no easy answers when a photojournalist is subjected to a legal request for his or her work products from governmental officials, this paper examines how state and federal laws and court decisions have both enhanced and inhibited a photojournalist's right to protect negatives, photographs, films, and videotapes from government requests. The first section of the paper discusses warranted searches for news photographs, First Amendment protections against newsroom searches, shield law protection against searches, and statutory protection against newsroom searches. The second section discusses the subpoena of news photography by governmental officials. Specific topics covered include the Supreme Court's commentary in "Branzburg v. Hayes," Court decisions rejecting First Amendment protection, statutory protection for confidential information, and the limits of state shield laws. The paper concludes that while no newsroom or darkroom is likely to be the object of a warranted search, photojournalists should be aware of the possible exceptions to the general prohibition on warranted searches. (FL)

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YOUR PHOTOS OR MINE:

AN EXAMINATION OF THE LAWS GOVERNING WARRANTED SEARCHES AND SUBPOENAS FOR THE PHOTOJOURNALIST'S WORK PRODUCT

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
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It began as just another routine assignment. A photographer for the Grand Forks, North Dakota, Herald had taken a series of photographs of a motorcycle/automobile accident. One of the photographs was published in the newspaper. Shortly after the accident, the operator of the motorcycle filed suit against the driver of the automobile.

The Herald became involved in this dispute when an attorney for one of the parties obtained a subpoena for all of the photographs taken of the accident by the Herald photographer.[1] The newspaper initially refused to provide the photographs. A district court then ordered the paper to comply wi'h the subpoena; an order which the Herald appealed directly to the North Dakota Supreme Court. After hearing arguments from both sides, the state supreme court refused to vacate the lower court order.[2]

In response to this decision, the Herald adopted a policy of destroying unpublished negatives if they could relate to any story which might result in legal action.[3] Although this policy may, at first glance, appear to be an answer to future subpoenas for photographic materials, the policy raises a new problem. By announcing this new policy, the Grand Forks Herald may one day find itself the subject of a warranted search of its newsroom for negatives and photographs. This may occur because of a little known exception to a federal statute which generally places strict limits on the use of warranted searchs of newsrooms by both state and federal officials. This exception allows for the use of warranted searches in newsrooms if there is reason to believe that a subpoena for the material would result in the destruction of the material sought.[5]

Although an actual warranted search of the Herald newsroom may only be a remote possibility, this episode helps to illustrate the general concept that there are no easy answers when a photojournalist is subjected to a legal request for his work product (i.e. negatives, photographs, films, and videotapes) from governmental officials. Such requests, issued through both warranted searches and subpoenas, have been both successfully and unsuccessfully resisted by photojournalists across the nation.

This paper is an examination of how state and federal laws and reported court decisions have both enhanced and inhibited a photojournalist's right to protect negatives, photographs, films and video tapes from governmental requests.

Warranted Search for News Photographs

The best known search of a newsroom occurred on April 12, 1971. Four policemen, armed with a search warrant, made a surprise visit to the newsroom of a student newspaper. They were looking for negatives, film, and photographs that were taken of a clash between protestors and police at the Stanford University Hospital on April 9, 1971. The search, which included the Daily's photographic laboratories, filing cabinet, desks, and wastepaper baskets, revealed only the photographs that had already been published. No material was removed from the newsroom by the police.[6]

One month later the Daily brought civil action against the police officers who conducted the search plus several other government officials. The Daily claimed that the search of its newsroom deprived the newspaper and its staff of their rights under the First and Fourteenth Amendments. The district court denied a request for injunctive relief, but did grant declatory relief. The court held that when a newspaper is the subject of a third party search, First Amendment interests make a search permissible only when there is a showing that important material will be removed or destroyed and a restraining order would not be effective. This decision was affirmed by the U.S. Court of Appeals, Ninth Circuit, but later reversed by the United States Supreme Court.[7]

Such a search of a newsroom is a rare event, particularly when the newspaper is accused of no wrongdoing. The Supreme Court in Zurcher v. Stanford Daily took note of this fact.[8] A brief submitted in support of the Daily could identify only six instances since 1971 that involved a search and seizure operation against the news media.[9] Only one case since Zurcher involving the search and seizure of a

photographer's work product has been reported. In this case, KMOT-TV in Minot, North Dakota, was able to have a search warrant issued for certain videotapes quashed by a federal district court because no compelling need for the material was shown.[10]

Although the Zurcher decision dealt with a rare occurrence, it still warrants analysis because of the Supreme Court's commentary on newsroom searches and the legislation that flowed from that discussion.

First Amendment protection against newsroom searches

A central argument used before the Supreme Court in Zurcher was that the warranted search of a newsroom hurts First Amendment interests in four ways. The Court was told that newsroom searches: (1) disrupt the gathering and dissemination of information, (2) chill news sources because of potential breaks in confidentiality, (3) cause the public to no longer view the press as an independent communicator of news, and (4) may cause reporters and news photographers to avoid seeking information that may later be sought by subpoenas or search and seizure operations.[11] This four-part argument was countered, in part, with the statement that newsroom searches, if narrow in scope, are brief and orderly.[12] The Court was also advised that the public's interests in fair and effective law enforcement outweighs the effect of a search and seizure operation on the media's newsgathering function.[13]

The Court said that the First Amendment does not protect the media from warranted searches. As long as newsroom searches are carried out with "specificity and reasonableness," the Court said, newsroom searches are not forbidden by the First Amendment.[14] Justice Powell added his view that "there is no constitutional basis" for the claim of a First Amendment protection against newsroom searches.[15]

Shield law protection against newsroom searches

The Court in Zurcher also removed the possibility that state shield laws could be used to provide some protection against newsroom searches. The Court said that

"state shield-law objections that might be asserted in opposition to compliance with a subpoena are largely irrelevant to determining the legality of a search warrant under the Fourth Amendment."[16]

Having virtually removed any protection that the news photographer might have sought under either the First Amendment or a shield law, the Court opened the door to future legislation. The Court said, "Of course, the Fourth Amendment does not prevent or advise against legislative or executive efforts to establish protections against possible causes of the search warrant procedure . . . ."[17]

Statutory protection against newsroom searches

Legislative remedies designed to protect the news media from search and seizure operations have been passed in response to Zurcher. This statutory response has taken place at both the state and federal levels of government.

The federal response to Zurcher is the Privacy Protection Act of 1980.[18] This statute, which applies to both federal and state governments,[19] gives rather broad protection against search and seizure operations to those engaged in the communication of information.

The Privacy Protection Act is of special interest to photojournalists because of the protections given to "documentary materials" such as videotapes and photographs.[20] The Act protects this material from search and seizure operations.[21] There are, however, four exceptions to this protection. The Act does not protect documentary materials when there is reason to believe that (1) the person possessing the material has committed or is committing a crime to which the material relates, (2) immediate seizure of the material will help prevent the death of serious bodily injury to a person, (3) the reliance on a subpoena duces tecum would result in the destruction, alteration, or concealment of the material, or (4) the material has not been produced in response to a subpoena duces tecum and (a) all appellate remedies have been exhausted or (b) there is reason to believe that the continued

reliance on a subpoena duces tecum would result in a delay that would threaten the interests of justice.[22] This protection of documentary material is meant to apply not only to material that has been published but also to material that was gathered but later judged not suitable for publication.[23]

The Senate Judiciary Committee, in issuing its report on the Privacy Protection Act of 1980, wrote that the concept of public communication is the key to the statute. "It is this flow of information to the public," the Committee wrote, "which is central to the First Amendment, and which is highly vulnerable to the effects of governmental intrusiveness."[24]

Seven state legislatures may have held similar beliefs when they passed legislation protecting the news media from search and seizures.[25] Each of these statutes limits the search and seizure of all news media operations to those cases where there is reason to believe that someone in the news organization has committed or is committing a crime. In addition to this general exception, two states allow the search and seizure of newsrooms if there is reason to believe that the material sought will be altered or destroyed if subpoenaed.[26]

Subpoena of News Photography

With the nation-wide limitation on the search and seizure of photographs and videotapes, the photojournalist will most often be confronted with a subpoena when the government is seeking information from the press. In issuing a subpoena, the courts will no doubt find partial support for their actions flowing from the Supreme Court's commentary in Branzburg v. Hayes.[27] This case evolved from the consolidation of three lower court cases that dealt with the issue of whether the First Amendment exempted newsmen from testifying before grand juries.[28] One of three cases involved a television news photographer, Paul Pappas, who had been allowed to photograph activities within the headquarters of a Black Panther group in New Bedford, Massachusetts. As a condition for access to the headquarters, Pappas

promised not to disclose anything he would see or hear except for an anticipated police raid, which he was free to film and report as he saw fit. The raid, however, did not occur, and Pappas did not reveal what had occurred inside the headquarters.[29]

Two months later, Pappas was summoned before a grand jury. He appeared but refused to answer any questions about what he had seen or heard, claiming that the First Amendment gave him the right to protect his confidential sources of information. Pappas was unsuccessful in asserting his First Amendment claim. From the trial court to the United States Supreme Court, Pappas found his right to keep his information and sources confidential rejected.[30]

News photography also played a part in a second case in Branzburg. Paul Branzburg, a reporter for a daily newspaper in Lousville, Kentucky, had written a story on the making of hashish from marijuana. The article included a photograph of a pair of hands working over a laboratory table. The caption identified the substance being made as hashish.[31]

Branzburg was later called before a grand jury and asked to identify the people making the drug. He refused on the grounds that a Kentucky shield law[32] plus the First Amendment authorized him to keep his sources of information confidential.[33] Branzburg was unsuccessful in his refusal to testify because he had witnessed a crime.[34]

The rejection of First Amendment protection

In a brief submitted before the Supreme Court, attorneys for Branzburg said that the First Amendment gave the journalist the right to refuse to testify about confidential sources of information. This protection was needed, the Court was advised, because without it the press would be unable to gather and disseminate information that the public had a right to receive.[35] This First Amendment claim was countered with the statement that "[c]ompelling [the] Petitioner [Branzburg]

to testify as a witness to the commission of a crime he saw, had photographed and wrote about in his employer's newspaper, in no way violates his rights under the First Amendment to the Constitution of the United States."[36]

The Court rejected the First Amendment arguments raised in this case. The Court began by stating that "without some protection for seeking out the news, freedom of the press could be eviscerated."[37] However, the Court added that this case did not involve other crucial First Amendment issues such as prior restraint or punishment for material published. The only issue involved, the Court said, was the obligation of reporters to respond to grand jury subpoenas and answer relevant questions about criminal acts; a requirement shared by all citizens.[38] The Court held that the First Amendment "does not, as it never has, exempt the newsman from performing the citizen's normal duty of appearing and furnishing information relevant to the grand jury's task."

Statutory protection for confidential information

The rejection of a First Amendment protection for confidential information does not leave the photojournalist totally at the mercy of subpoenas seeking his work product. Twenty-six states have passed laws, usually referred to as shield laws, that provide for some protection of the news media's confidential sources of information.[40] The shield laws generally state that no one engaged in the gathering and dissemination of information, while working as a member of the mass media, may be held in contempt for refusing to disclose confidential sources of information.

The state shield statutes provide for varying degrees of protection to the news photographer's and reporter's sources of information. Fourteen state shield laws make no mention of when the statute may be divested. This creates an almost absolute form of protection.[41] Eleven other state shield laws provide for a more

limited protection of a confidential sources by stating that the statutory protection may be divested, usually by a higher court.[42] Shield laws in three states protect television news photographers and reporters only if the station keeps a copy of the actual news broadcast on file for a prescribed period of time, usually ranging from six months to a year.[43] Information that was gathered but not published is also protected by eight state shield laws.[44]

There is no federal shield law that protects the media's confidential sources of information. The Justice Department, however, has issued guidelines on issuing subpoenas to news photographers and reporters.[45] These guidelines stress that a balance should be struck between the interests of the press and the public's interest in effective law enforcement. Emphasis is placed on negotiation with the news media over the request for information before any attempt is made to subpoena the information.[46]

If the negotiations fail, then the Attorney General must approve every subpoena. The subpoena should be seeking information that can directly establish guilt or innocence of a suspected crime. This should be information that is not generally available from non-media sources. The subpoena should also apply to a limited subject matter that has already been published. The seeking of large volumes of unpublished information is discouraged.[47]

The limits of state shield laws

Any protection given to the news photographer under a state shield statute may be, at best, a limited protection. The Supreme Court stressed this concept in Branzburg by stating that the journalist does not enjoy a special First Amendment privilege against testifying before grand juries.[48] The Court added that a journalist cannot refuse to testify about a crime he witnessed because, "The crimes of news sources are no less reprehensible and threatening to the public interest when

witnessed by a reporter than when they are not."[49] This same argument was used by a court in New York to compel a television cameraman to divulge the identity of individuals he had observed while on assignment, even though a state shield statute protected the identity of the newsman's confidential sources of information.[50]

A question of need

Even with the protection given by state shield statutes and the Justice Department guidelines on subpoenas issued to the press, news photographers have been subjected to subpoenas seeking photographs, film, negatives, and videotapes. The photojournalist's ability to protect the confidentiality of his work product depends, in many cases, on the government's ability to show a compelling need for the material.

This compelling need concept was used in arguments presented before the Supreme Court in Branzburg. It was argued that the state bears a heavy burden of proof before the freedom of the press can be compromised.[51] This burden of proof, the Court was advised, must include a showing by the state that there is a direct, immediate threat of irreparable damage to life, liberty, or national security before a journalist can be required to disclose his confidential sources of information.[52] The Court responded with the statement that the state had shown a compelling need for the information sought in this case.[53]

The compelling need concept, which has been used by lower courts on several occasions, is generally broken down into a three part test: (1) the photographer has material that is relevant to the case under consideration; (2) there is a crucial or compelling need for the material; (3) the individual seeking the material is unable to obtain it from other sources. Several courts have quashed subpoenas for negatives, photographs, film, or videotapes because no compelling need was shown by the part seeking the material.[54] Subpoenas for videotapes from two

television stations were modified by an appeals court because the original subpoenas were too broad, based on the need shown by the party seeking the material.[55]

The compelling need protection for the photojournalist's work product, however, is not absolute. In the Grand Forks Herald case discussed earlier, the North Dakota Supreme Court said that because "we believe the interest of the Herald in protecting this particular information is slight . . . the showing of Leng [the attorney seeking the photographs] therefore is not great."[56] In other words, there was no need to show a compelling need.

The Question of Confidentiality

Photojournalists seeking to protect their work product from subpoenas may also find the courts granting less protection for material that does not contain information of a confidential nature. The Court of Appeals, Third Circuit, noted that "the lack of a confidential source may be an important element in balancing the defendant's need for the material sought against the interest of the journalist in preventing production in a particular case."[57]

This lack of confidentiality of information contained in the photographer's work product has led to a diversity of rulings. The Court of Appeals, Third Circuit, for example, said that out takes of an interview were still protected from a subpeona even though the primary source of information was known.[58] In two other cases, however, the lack of confidential sources of information was cited as a reason for denying protection for photographic materials sought by subpoena.[59]

No right to refuse

No matter what protection the photojournalist has under state shield statutes, court decisions, or federal guidelines, the news photographer must respond in some fashion to a subpeona. The Supreme Court emphasized this in Branzburg, holding that newsmen were required to appear and testify before grand juries.[60] Justice Stewart,

dissenting, noted that the media must move to quash a subpoena rather than completely ignore it.[61]

A federal district court echoed this view. The court said that the news photographer deserves the same privileges enjoyed by the traditional journalist under the First Amendment. But the court was still "greatly bothered by the unreasonable refusal of the journalists to even appear at their designated depositions, particularly from people who belong to a profession that continually espouses the people's right to know."[62] The court added that photojournalists must "respond to the subpeonas and assert whatever privilege they may properly invoke in response to particular questions."[63]

Summary and Conclusions

As was stated in the opening sections of this paper, there are no easy answers for photojournalists who are faced with either a warranted search of their files or a subpoena for negatives, photographs, films, or videotapes. A few general observations, however, can be made.

First of all, it appears that there is not a great likelihood of any newsroom or darkroom being the object of a warranted search. With the general prohibition of such activities by state and federal officials, as directed by a federal statute, governmental requests for negatives, photographs, films, or videotapes will more than likely take the form of subpoenas rather than warranted searches.

Photojournalists, however, should not take too much comfort in the protection provided by this general prohibition on warranted searches. There are four key exceptions in the law which may be used as justification for a search and seizure operation. News photographers everywhere should be made aware of these exceptions, for without knowledge of the loopholes in this law, there may indeed come the day when a newsroom or darkroom is the subject of a warranted search.

Although there may be little likelihood of a search and seizure operation being conducted to obtain photographic information, there is the constant threat that a photojournalist's work product may be sought by subpoena. If that occurs, then the rights of a photojournalist to refuse such a request become much more confusing.

Perhaps the most important concept for a photojournalist to keep in mind when faced with a subpoena is that any subpoena must be at least acknowledged and formally acted upon. Governmental officials take a very dim view of any photojournalist's refusal to even respond to a subpoena.

The nature of the response to a subpoena, whether it be in the form of compliance or refusal, is of course up to the individual photographer and his or her editors. Those choosing to resist subpoenas for photographic information may find a state shield law offers some degree of protection. Unfortunately, however, only 26 states have a shield law. For photographers working in states without shield law protection, the best defense may flow from an asserted First Amendment right to gather and publish information. This particular defense, however, may prove to be less effective than would the protection offered under a shield law.

Perhaps the best solution for all news photographers, and especially for those working in states without a shield law protection from subpoenas for information, lies in the passage of a national shield law. This statue, which could take a form similar to the federal statute limiting newsroom searches, could conceivably provide a more uniform degree of protection to all news photographers. In addition to pushing for a national shield law, photojournalists should work for the passage and strengthening of shield laws on the state level.

Until all states and/or the federal government adopts a shield law(s), news photographers may find their efforts to protect their work product a bit easier if they keep a few points in mind. First of all, photojournalists who work in

states with shield laws may find their efforts to resist subpoenas more successful than those working in states without shield laws. Second, shield laws vary in the level of protection offered. Some are absolute, while others may be lifted by a court order. Third, shield law protection has on occasion been lifted when the information sought has not been of a confidential nature. Fourth, asking those seeking information from photojournalists to demonstrate a compelling need for the material sought has often strengthened a photojournalist's attempts to protect his or her work product. Fifth, and finally, this author would like to share a few words from a far wiser man; words which could be applied with equal force to those investigating the law as it related to warranted searches and subpoenas for photographic information. In his introduction to The Adventures of Huckleberry Finn, Mark Twain offered a piece of advice to his readers. Twain wrote, "Persons attempting to find a motive in this narrative will be prosecuted; persons attempting to find a moral in it will be banished; persons attempting to find a plot in it will be shot."

NOTES

[1]The reason behind the request for the photographs varies, depending on who is asked. The executive editor claimed that the attorney was on "nothing but a fishing expedition," trying to find potential witnesses in the pictures taken at the accident scene. Hvidston III, NEWS PHOTOGRAPHER, March, 1983, at 10. The attorney, however, claimed that the photographs were necessary in order to establish the point of impact between the two vehicles, a key point in the suit. Grand Forks Herald v. District Court, 322 N.W. 2d 850, 856 (N.D. 1982).

[2]Grand Forks Herald v. District Court 322 N.W. 2d at 857.

[3]Hvidston supra note at 10.

[4]The Privacy Protection Act of 1980, 42 U.S.C.A. § 2000aa (West 1981).

[5]Id. at (b) (3).

[6]Zurcher v. Stanford Daily, 436 U.S. 547, 550-52 (1978).

[7]Id. at 552-53.

[8]Id. at 566.

[9]Brief for Amici Curiae at 11. It is interesting to note that of the six media searches cited, one involved an underground newspaper and another involved a sexually explicit tabloid.

[10]In re application of KMOT-TV, 7 Media L. Rep. 1443, 1445 (N.D. Dist. Ct. 1981).

[11]Brief for Respondents at 18-24; Brief for Amici Curiae at 15-24.

[12]Brief for Petitioners Bergna and Brown at 22-24.

[13]Id.

[14]436 U.S. at 566-67.

[15]Id. at 568 (Powell, J., concurring).

[16]Id. at 567.

[17]Id.

[18]42 U.S.C.A. § 2000aa (West 1981).

[19]The Privacy Protection Act of 1980 went into effect on the federal level on January 1, 1980, and on the state level on October 13, 1981.

[20]42 U.S.C.A. 2000aa-7 (West 1981).

[21]42 U.S.C.A. § 2000aa(b) (West 1981).

[22]42 U.S.C.A. §§ 2000aa(b) (1) to 2000aa(b) (4) (West 1981)

[23]SENATE COMM. ON JUDICIARY, PRIVACY PROTECTION ACT OF 1980, S. REP. NO. 96-874, 96th Con., 2d Sess. 10, reprinted in 1980 U.S. CODE CONG. & AD. NEWS 3950, 3956.

[24]Id.

[25]See, e.g., CONN. GEN. STAT. ANN. § 54-33j (West Supp. 1981); ILL. REV. STAT. ch. 38 § 108-3(b) (1979); LA. REV. STAT. ANN. § 15:42 (West Supp. 1982); NEB. REV. STAT. § 29-813 (1979); N.J. STAT. ANN. § 2A:84A-21.9 (West Supp. 1981-1982); OR. REV. STAT. § 44.520(2) (1979); TEX. CODE CRIM. PROC. ANN. art. 18.01(e) (Vernon Supp. 1982).

[26]ILL. REV. STAT. ch. 38, § 108-3(b) (1979); N.J. STAT. ANN. § 2A:84A-21.9 (West Supp. 1981-82).

[27]408 U.S. 665 (1972).

[28]Id. at 667.

[29]Id. at 672

[30]Id. at 672-75.

[31]Id. at 667.

[32]KY. REV. STAT. § 421.000 (1962).

[33]408 U.S. at 668.

[34] Id. at 668-71.

[35]Brief for Petitioner, Paul M. Branzburg at 13.

[36]Brief for the Respondent, John P. Hayes, Judge at 4.

[37]408 U.S. at 681.

[38]Id. at 681-82.

[39]Id. at 691. Justice Powell's concurring opinion, which provded the necessary fifth vote, stressed the concept that any First Amendment interest asserted by a newsman to protect his confidential sources of information should be balanced with the obligation of all citizens to testify about criminal conduct. Id. at 710 (Powell, J., concurring).

[40]See infra text accompanying notes 41-43.

[41]ALA. CODE § 12-21-142; ARIZONA REV. STAT. ANN. § 12-2237 (1982); CAL. EVID. CODE § 1070 (West Supp. 1981); IND. CODE § 34-3-5-1 (1976); KY. REV. STAT. § 421.100 (1970); MD. CTS. & JUD. PROC. CODE ANN. § 9-112 (1980; MICH. COMP. LAWS. ANN. § 767.5a (1968); MONT. CODE ANN. § 26-1-901 to 26-1-903 (1981); NEB. REV. STAT. §§ 20-144 to 20-146 (1977); NEV. REV. STAT. § 49.275 (1979); N.J. STAT. ANN § 2A:84A-21 (West Supp. 1981-1982); N.Y. CIV RIGHTS LAW § 79-h (McKinney Supp. 1981-1982); OHIO REV. CODE ANN. § 2739.04 (Page Supp. 1980) applies to broadcast media), § 2739.12 (Page 1953) (applies to print media); OR. REV. STAT. §§ 44.510 to 44.540 (1979); 42 PA. CONS. STAT. ANN. § 5942 (Purdon 1981).

[42]ALASKA STAT. § 09.25.150-220 (1973); ARK STAT. ANN. § 43-917 (1977); DEL. CODE ANN. 10 § 4320-4325 (1974); ILL. REV. STAT. ch. 51, § 111-19 (1979); LA. REV. STAT. ANN. § 45:1451 to 1454 (West Supp. 1982); MINN. STAT. ANN. § 595.021 to 595.024 (West Supp. 1981); N.M. STAT. ANN. § 38-6-7 (Supp. 1980); N.D. CENT. CODE § 31-01-06.2 (1976); OKLA. STAT. ANN. tit, 12, § 2506 (West 1980); R.I. GEN. LAWS § 9-19.1-1 to 9-19.1-3 (Supp. 1981); TENN. CODE ANN. § 24-1-208 (1980).

[43]N.J. STAT. ANN § 2A:84A-21 (West Supp. 1981-1982); OHIO REV. CODE ANN. § 2739.04 (Page Supp. 1980); 42 PA. CONS. STAT. ANN. § 5942 (Purdon 1981).

[44]CAL. EVID. CODE § 1070 (West Supp. 1981); IND. CODE § 34-3-5-1 (1976); MINN. STAT. ANN. § 595.021 to 595.024 (West Supp. 1981); MONT. CODE ANN. § 26-1-901 to 26-1-903 (1981); NEB. REV. STAT. § 20-144 (1977); NEV. REV. STAT. § 49.275 (1979); N.J. STAT. ANN. § 2A:84A-21 (West Supp. 1981-1982); OKLA. STAT. ANN. tit. 12, § 2506 (West 1980).

[45]28 C.F.R. § 50.10 (1980).

[46]28 C.F.R. § 50.10 (a) to 50.10(c) (1980).

[47]28 C.F.R. § 50.10(d) to 50.10(e)(6) (1980).

[48]408 U.S. at 689-91.

[49]Id. at 692.

[50]People by Fischer v. Dan, 342 N.Y.S.2d 731, 732-33 (N.Y. App. Div. 1973).

[51]Brief for Petitioner, Paul M. Branzburg at 44.

[52]Id.

[53]408 U.S. at 700-01.

[54]U.S. v. Smalley, 9 Media L. Rep. 1252, 1254 (D. Tex. 1983); Wilkins v. Kalla, 9 Media L. Rep. 1334, 1335 (N.Y. Sup. Ct. 1983); Suede Originals v. Aetna Casualty, 8 Media L. Rep. 2565, 2566 (Tex. D. Ct. 1982); Johnson v. Miami, 6 Media L. Rep. 2110, 2112 (D. Fla. 1980); Schulthise v. Weyer Brothers, 6 Media L. Rep. 1661, 1662 (Fla. Cir. Ct. 1980); Florida v. Beattie, 4 Media L. Rep. 2150, 2151 (Fla. Cir. Ct. 1979); Florida v. Silber, 5 Media L. Rep. 1188, 1189 (Fla. Cir. Ct. 1979); Application of Dack, 421 N.Y.S.2d 775, 781 (N.Y. Sup. Ct. 1979); In re Grand Jury Subpoena, 5 Media L. Rep. 1153, 1153 (Tex. Dist. Ct. 1979).

[55]United States v. Cuthbertson, 630 F.2d 139, 146 (3d Cir. 1980); CBS, Inc. v. Superior Court, 149 Cal. Rptr. 421, 428 (Cal. Ct. App. 1978).

[56]Grand Forks Herald v. District Court, 322 N.W.2d at 857.

[57]United States v. Cuthbertson, 630 F.2d at 147.

[58]Steaks Unlimited, Inc. v. Deaner, 623 F.2d 264, 279 (3d Cir. 1980).

[59]Lynch v. Riddell, 8 Media L. Rep. 2290, 2292 (D. Mass. 1982); Grand Forks Herald v. District Court. 322 N.W.2d at 856.